



August 8, 2001

Ms. Kimberley Mickelson
Olson & Olson
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2001-3460

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150484.

The City of Friendswood (the "city"), which you represent, received a request for various documents, videotapes, and audiotapes pertaining to the arrest of a specified peace officer. You claim that the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.117(2) of the Government Code excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer or that reveals whether the peace officer has family members. However, section 552.117(2) only protects a peace officer's 552.117 information in the context of his role as a peace officer and not as a suspect, complainant, or victim in a criminal investigation. Therefore, you may not withhold from disclosure any of the submitted information pursuant to section 552.117(2) of the Government Code.

We note, however, that the submitted videotape contains photographs of peace officers. Section 552.119 of the Government Code excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one

of three exceptions applies.¹ The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. *See* Gov't Code § 552.119(a). This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). You do not indicate, nor can we determine from our review of the submitted information, whether any of the peace officers in the submitted videotape are under indictment, charged with an offense by information, or are parties in a police civil service hearing or a case in arbitration involving the City of Friendswood. Therefore, we assume that no exceptions under section 552.119(a) are applicable in this instance. Accordingly, you must withhold from disclosure all photographs of peace officers on the submitted videotape pursuant to section 552.119 of the Government Code. However, you state that "[r]edacting the tape is beyond the technological capability of the Department[.]" Therefore, to the extent that the city does not maintain the technological capability to redact the photographs of the peace officers from the submitted videotape, we conclude that you must withhold the videotape from disclosure in its entirety.

We also note that the submitted documents and videotape contain social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).² *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that the social security numbers at issue are confidential pursuant to section 405(c)(2)(C)(viii)(I) of Title 42 of the United States Code. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, you should ensure that the numbers were not obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In addition, we note that the submitted documents contain information subject to section 552.101. Section 552.101 encompasses the common law right to privacy. Information is protected by the common law right to privacy if it is information that 1)

¹ The term "peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

² Section 552.101 of the Government Code excepts information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. We have marked the information that must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. However, we note that the requestor may be the authorized representative of the arrested peace officer. To the extent that this is true, we conclude that you must release the information which we have marked pursuant to section 552.101 in conjunction with the common law right to privacy. *See Gov't Code § 552.023* (providing that individual or individual's authorized representative has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987).

Finally, we note that the submitted documents, videotapes, and audiotape contain information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. We have marked the information in the submitted documents that you must withhold from disclosure pursuant to section 552.130. We note that you must redact the section 552.130 information contained in the submitted videotapes and audiotape. We also note that we cannot determine whether some of the information contained within the submitted documents and audiotape is motor vehicle information that relates to a license, permit, title, or registration issued by an agency of the state of Texas. If any unmarked motor vehicle information contained within the submitted documents and audiotape relates to a license, permit, title, or registration issued by an agency of the state of Texas, you must withhold it from disclosure pursuant to section 552.130 of the Government Code. If not, you must release it to the requestor. However, to the extent that the requestor is the authorized representative of the arrested peace officer, we conclude that you must release the arrested peace officer's section 552.130 information to the requestor. *See Gov't Code § 552.023*. In addition, to the extent that the city does not maintain the technological capability to redact the section 552.130 information contained on the submitted videotape, we conclude that you must withhold the videotape from disclosure in its entirety.

In summary, you must withhold from disclosure all photographs of peace officers on the submitted videotape pursuant to section 552.119 of the Government Code. However, to the extent that the city does not maintain the technological capability to redact the photographs of the peace officers from the submitted videotape, we conclude that you must withhold the videotape from disclosure in its entirety. The social security numbers contained within the submitted documents and videotape may be confidential pursuant to federal law. You must

withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. However, to the extent that the requestor may be the authorized representative of the arrested peace officer, we conclude that you must release all of the section 552.101 privacy information which we have marked. You must withhold from disclosure the information that we have marked pursuant to section 552.130 of the Government Code. You must redact the information contained in the submitted videotapes and audiotape that is excepted from disclosure pursuant to section 552.130. If any unmarked motor vehicle information contained within the submitted documents and audiotape relates to a license, permit, title, or registration issued by an agency of the state of Texas, you must withhold it from disclosure pursuant to section 552.130. Otherwise, you must release it. However, to the extent that the requestor is the authorized representative of the arrested peace officer, we conclude that you must release the arrested peace officer's section 552.130 information to the requestor. In addition, to the extent that the city does not maintain the technological capability to redact the section 552.130 information contained on the submitted videotape, we conclude that you must withhold the videotape from disclosure in its entirety. Finally, you must release all other submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

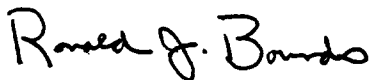
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 150484

Enc. Marked documents, submitted videotapes, submitted audiotape

cc: Mr. Greg Cagle
Cagle & McCumber
303 East Main Street
League City, Texas 77574
(w/o enclosures)